

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10709 OF 2021

WITH

CIVIL APPLICATION NO.13785/2022

IN

WRIT PETITION NO.10709 OF 2021

Samaj Prabodhan Pratishthan,
Parali Vaijnath, Dist. Beed,
through its Secretary,
Bhagwan Nagorao Deshmukh,
Aged : 50 years, Occ: Agriculture,
R/o. Parali Vaijnath, Dist. Beed.

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
through Principal its Secretary
to the Government of Maharashtra
in Women & Child Development
Department, Maharashtra State,
Mantralaya, Mumbai – 32.
2. The Commissioner,
Women & Child Development
Maharashtra State, Pune.
3. The Regional Deputy Commissioner,
Women and Child Development
Aurangabad.
4. The District Women & Child
Development Officer, Beed.
5. The District Child Welfare
Committee, Beed,
Near Chandan Hotel,
Opp. Panchayat Samiti, Beed
through its President.

... **RESPONDENTS**

WITH

**WRIT PETITION NO.10682 OF 2021
WITH
CIVIL APPLICATION NO.13795/2022
IN WP/10682/2021**

Jagdamba Shikshan Prasarak Mandal,
Majalgaon, Dist. Beed,
through its Secretary,
Bhagwan Nagorao Deshmukh,
Aged : 50 years, Occ: Agriculture,
R/o. Majalgaon, Dist. Jalna

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
through Principal its Secretary
to the Government of Maharashtra
in Women & Child Development
Department, Maharashtra State,
Mantralaya, Mumbai – 32.
2. The Commissioner,
Women and Child Development
Maharashtra State, Pune.
3. The Regional Deputy Commissioner,
Women and Child Development
Aurangabad.
4. The District Women & Child
Development Officer, Jalna.
5. The District Women & Children
Development Officer, Beed.
6. The District Child Welfare
Committee, Jalna,
through its President.
7. The District Child Welfare
Committee, Beed, through
its President

... **RESPONDENTS**

**WITH
WRIT PETITION NO.10699 OF 2021**

Shahu Maharaj Bahuddeshiya
Sevabhavi Sanstha Va Shikshan
Prasarak Mandal, Ashti, Dist. Beed,
through its President,
Sukhdeo Suryabhan Pokale,
Aged : 45 years, Occ: Agriculture,
R/o. Ashti, Tq. Ashti, Dist. Beed.

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
through Principal its Secretary
to the Government of Maharashtra
in Women & Child Development
Department, Maharashtra State,
Mantralaya, Mumbai – 32.
2. The Commissioner,
Women and Child Development
Maharashtra State, Pune.
3. The Regional Deputy Commissioner,
Women and Child Development
Aurangabad.
4. The District Women & Child
Development Officer, Beed.
5. The District Child Welfare
Committee, Beed,
Near Chandan Hotel,
Opp. Panchayat Samiti, Beed
through its President

... **RESPONDENTS****WITH****WRIT PETITION NO.10706 OF 2021**

Chhatrapati Shahu Pratishthan,
Ambajogai, Dist. Beed,
through its Secretary,
Baliram Balu Chopane,
Aged : 47 years, Occ: Agriculture,
R/o. Morewadi, Tq. Ambajogai
Dist. Beed

... **PETITIONER****VERSUS**

1. The State of Maharashtra,
through Principal its Secretary
to the Government of Maharashtra
in Women & Child Development
Department, Maharashtra State,
Mantralaya, Mumbai – 32.
2. The Commissioner,
Women and Child Development
Maharashtra State, Pune.

3. The Regional Deputy Commissioner,
Women and Child Development
Aurangabad.
4. The District Women & Child
Development Officer, Beed.
5. The District Child Welfare
Committee, Beed,
Near Chandan Hotel,
Opp. Panchayat Samiti, Beed
through its President

... **RESPONDENTS****WITH****WRIT PETITION NO.10710 OF 2021**

Vaidyanath Bahuddeshiya Jankalyan
Shikshan Sanstha, Latur
through its President,
Laxman Nivrutti Munde,
Aged : 40 years, Occ: Agriculture,
R/o. Krushna Nagar, Parali Vajinath,
Dist. Beed

... **PETITIONER****VERSUS**

1. The State of Maharashtra,
through Principal its Secretary
to the Government of Maharashtra
in Women & Child Development
Department, Maharashtra State,
Mantralaya, Mumbai – 32.
2. The Commissioner,
Women and Child Development
Maharashtra State, Pune.
3. The Regional Deputy Commissioner,
Women and Child Development
Aurangabad.
4. The District Women & Child
Development Officer, Beed.
5. The District Child Welfare
Committee, Beed,
Near Chandan Hotel,
Opp. Panchayat Samiti, Beed
through its President

... **RESPONDENTS****WITH**

WRIT PETITION NO.10711 OF 2021

Akhil Bhartiya Sanskrut Pracharini
 Sanstha, Parali Vajinath, Dist. Beed,
 through its Secretary,
 Laxman Nivrutti Munde,
 Aged : 40 years, Occ: Agriculture,
 R/o. Krushna Nagar, Parali Vajinath,
 Dist. Beed

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
 through Principal its Secretary
 to the Government of Maharashtra
 in Women & Child Development
 Department, Maharashtra State,
 Mantralaya, Mumbai – 32.
2. The Commissioner,
 Women and Child Development
 Maharashtra State, Pune.
3. The Regional Deputy Commissioner,
 Women and Child Development
 Aurangabad.
4. The District Women & Child
 Development Officer, Beed.
5. The District Child Welfare
 Committee, Beed,
 Near Chandan Hotel,
 Opp. Panchayat Samiti, Beed
 through its President

... **RESPONDENTS**

WITH**WRIT PETITION NO.10722 OF 2021**

Jeevandhara Bahuddeshiya Sevabhavi
 Sanstha, Tokwadi, Tq. Parali Vajinath,
 District Beed,
 through its President,
 Sanjay Bhaskarrao Munde
 Aged : 40 years, Occ: Agriculture,
 R/o. Tokwadi, Tq. Parali Vajinath
 Dist. Beed

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
through Principal its Secretary
to the Government of Maharashtra
in Women & Child Development
Department, Maharashtra State,
Mantralaya, Mumbai – 32.
2. The Commissioner,
Women and Child Development
Maharashtra State, Pune.
3. The Regional Deputy Commissioner,
Women and Child Development
Aurangabad.
4. The District Women & Child
Development Officer, Beed.
5. The District Child Welfare
Committee, Beed,
Near Chandan Hotel,
Opp. Panchayat Samiti, Beed
through its President.

... **RESPONDENTS**

...

Advocate for Petitioners : Mr. Patil N.P. Jamalpurkar
AGP for respondents : Mr. S.B. Yawalkar

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 04.10.2022

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondents. At the joint request of the parties the matters are being disposed of by this common judgment since though the petitioners are different the respondents are the same and the petitioners are impugning the self same common order passed by the respondent No.2 Commissioner - Women and Child Development dated 17.08.2021 rejecting their applications for registration of Children Home under Section 41 of the

Juvenile Justice (Care and Protection of Children) Act, 2015 (herein after the Act of 2015).

2. The petitioners are the Public Trusts and Societies registered under the Maharashtra Public Trusts Act and the Societies Registration Act intending to set up child care homes. The petitioners and some such similar trusts and societies had approached this Court seeking a mandamus directing the respondents to consider their proposals. The other petitioners were seeking renewal of their licences which were issued to them under the Juvenile Justice (Care and Protection of Children) Act, 2000 (herein after the Act of 2000). Whereas the petitioners were seeking a new registration under Section 41 of the Act of 2015. The impugned decisions have been taken after the directions of this Court in Writ Petition No.4831/2020 and connected matters decided on 22.12.2020 (**Jay Sevalal Sevabhavi Sanstha Takarwan, Tq. Majalgaon, District Beed Vs. The State of Maharashtra and Ors.**).

3. It is to be noted that as is mentioned herein above, by similar impugned communications addressed to each of the petitioners the proposals have been turned down by the respondent No.2.

4. The Trusts and Societies which were already registered under the Act of 2000, had challenged the similar communications refusing to renew their licences by preferring Writ Petition No.7821/2021 (**Mother Teresa Balakashram Vs. The State of Maharashtra and Ors.**) and connected matters. We have partly allowed the Writ Petitions on 08.09.2022 and have

directed the respondent No.2 to take decision afresh, by observing that the impugned communications were illegal. We reproduce paragraph No.10 to 12.

“10. There cannot be any dispute about the consequences of the Act of 2015 replacing the Act of 2000 viz-a-viz registration of child care homes, in view of section 41 of the former. Section 41 of the Act of 2015 lays down the provision of registration of child care institutions. Sub-Section (1) mandates registration of such institutions but the proviso clearly prescribes that the institutions having valid registration under the Act of 2000 on the date of commencement of the Act of 2015 shall be deemed to have been registered. Precisely for this reason, while deciding writ petition no. 4831 of 2020 with connected mattress, it was observed that the petitioners - institutions were not required to be registered afresh, albeit, since the registration under the Act of 2015 can be only for a period of 5 years at a time requiring renewals thereafter from time to time, in view of Sub-Section (6) of Section 41, it was imperative for the petitioners’ child care homes to renew their registration within one year as was required by Rule 22(1)(b) of the Rules of 2018 framed under the Act of 2015. It was also specifically observed that such re-registration under the Act of 2015 has been mandated because of the rigours of the registration of institutions under the Act of 2015. It was clearly noticed that the provisions of the Act of 2015 and the rules of 2018 were required to be obeyed and an opportunity to the concerned authorities would be available to look into the strict compliances of such institutions under the new provisions. The following question was formulated by this Court while deciding writ petition no. 4831 of 2020 :

“Whether the Institutions granted registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 would be required to apply for registration under the Act-2015 and / or seek renewal of registration after 1 year?”

While answering this question, the following observations have been made which according to us need to be borne in mind while deciding these petitions :

“12. Sub Section 1 of Section 41 of the Act-2015 is circumscribed by the proviso appended to it.

Proviso appended to said Sub Section carves out an exception. The institutions possessing valid registration under

the Act-2000 on the date of commencement of the Act-2015 shall be deemed to be registered under the Act-2015.

15. The institutions, though registered under the Act- 2000, are required to comply with the provisions of the Act-2015 in all respects. All the requirements, such as, the infrastructure and all other aspects are to be complied as required under the Act-2015. Under the Act-2000 some of the institutions were registered for 5 years and renewals were granted to them from time to time and in cases of few institutions the registration did not provide for the period of registration. Under the Act-2015 once registration is granted the same is valid of 5 years as per Sub Section 6 of Section 41 and those institutions are required to apply for renewal. The petitioner institutions upon enactment of the Act-2015 and Rules- 2016 would be governed by the Act-2015 and Rules framed thereunder. The registration under the Act-2015 cannot be valid for more than 5 years unless renewed.

16. Proviso to Sub Section 1 of Section 110 of the Act-2015 provides that the Central Government may frame Model Rules in respect of or any of the matters with respect to which the State Government is required to make Rules and where any such Model Rules have been framed in respect of any such matter they shall apply to the State mutatis mutandis unless the rules in respect of that matter are made by the State Government. The Model Rules-2016 framed by the Central Government came into force with effect from 21.09.2016. They were published in the Gazette on 21.09.2016.

21. Reading the proviso to Sub Section 1 of Section 41 of the Act-2015 and Sub Rule 1(b) of the Rule 22 of the Rules-2018 harmoniously the irresistible conclusion can be drawn that the institutions housing children in need of care and protection or children in conflict with law registered under the Act-2000 will be deemed to be registered under the Act-2015 and these institutions shall get renewal of their registration after completion of 1 year as per the provisions of the Act and Rules. The leverage has been given of 1 year for these institutions to get the registration renewed. Once the registration is granted under the Act-2015 that registration would be valid for 5 years and after 5 years the institution will have to seek renewal. Reference can be had to Sub Section 6 of Section 41 of the Act-2015.

22. To apply for renewal of registration after 1 year is also

necessary because these institutions deemed to be registered did not undergo rigors of registration under the Act-2015 so as to give an opportunity to the authority to verify compliance of the requirement of the Act-2015 and the rules.”

In view of such clear observations, it was imperative for the respondent no. 2 to scrutinize petitioners’ proposals as per the directions of this Court objectively. Though it is expected that the respondent no. 2 would take decisions strictly in compliance of the provisions of the Act of 2015 and the rules of 2018, it was imperative for him to have followed the principles of natural justice in pointing out the deficiencies to the petitioners and calling upon them to make compliances, may be within the stipulated time. It is not that he was legally obliged to treat the petitioners’ proposals as fresh proposals under section 41(1) of the Act of 2015 but it clearly appears that he has treated these proposals in that fashion. He seems to have taken a bold decision of out-rightly rejecting the proposals of as many as 57 institutions in one stroke by the same communication which are under challenge in these writ petitions. The impugned communication only vaguely asserted that it was found that the proposals were not compliant with the requirements of law particularly the rules 22 and 23. It merely vaguely mentioned that the proposals were not complete in all respect and the documents were not annexed. The impugned communication is bereft of any concrete ground or reason for communication. It has not even been made clear in the affidavit in reply as to if a specific order in each of the petitioners’ proposals was passed by the respondent no. 2.

11. *True it is that in affidavit in reply, a subsequent communication is annexed pointing out the deficiencies to be met by the petitioners. We are afraid, it is a sheer afterthought. If the respondent no. 2 was of the opinion that the proposals of the petitioners’ were deficient in some specific respect, he should have firstly notified the objections to the petitioners and called upon them to comply with it before taking any drastic decision of straightway rejecting the proposals. It is like putting the cart before the horse. He has taken the decision first and then seems to have taken steps to notify the petitioners regarding the specific objection, whereas the proper course should have been in the reverse order.*

12. *Be that as it may, the impugned communications clearly demonstrate utter lack of any objectivity in decision making process and even has been taken without following the principles of natural justice. We, therefore, deem it appropriate to quash and set aside the impugned communications and request the respondent no. 2 to take decisions afresh in the light of the observations made herein-above.”*

5. For the same reasons, We allow the Writ Petitions partly. The impugned communications are quashed and set aside. The respondent No.2 shall now take decisions on the petitioners' proposal afresh in the light of the observations made herein above by giving them opportunity of being heard and by enabling them to rectify the shortcomings, if any, in their proposals.

6. The petitioners shall approach the respondent No.2 once again within four weeks from today and the respondent No.2 shall take final decision within 16 weeks from today.

7. Rule is made absolute in above terms.

8. Pending civil applications are disposed of.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)

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